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No. 85-373

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

CHARLES REED AND ROLAND DUTY,
Petitioners,

V.

JAMES TERRELL, SUE RAYBOLD, BILL LOGUE,
JOE JOHNSON, AND THE
STATE BAR OF TEXAS,
Respondents.

PETITIONERS' REPLY TO STATE BAR OF TEXAS' OPPOSITION TO CERTIORARI

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EDITOR'S NOTE

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STATEMENT OF THE CASE

The State Bar of Texas' opposition creates the false impression that the Petition for a Writ of Certiorari in this case recites numerous facts which were not in the record for the courts below, and implies that all the factual allegations relevant to this case are contained in Petitioners' Verified Amended Complaint, which is included in the appendix of the State Bar's opposition.

The record in this case contains voluminous publications by the State Bar of Texas attached as exhibits, the bulk of which makes it impossible to include them in the appendix to this petition. The record in this case also includes pleadings not allowed to be filed by the District Court because the court intended to dismiss the complaint, as well as the transcripts of two District Court hearings and other sworn pleadings. Petitioners' Statement of the Case is correct as stated.

SUMMARY OF THE ARGUMENT

The State Bar of Texas' opposition missrepresents the facts available in the record of this case, cites cases not on point with this one, alternately argues different sides of the same questions, is logically inconsistent, and should be rejected for these and other reasons.

ARGUMENT

The State Bar of Texas pretends this case does not involve a "general challenge to the constitutionality of a state rule", then alternately argues that Petitioners did not allege facts to show that V.T.C.A. Family Code Section 11.18(a) was missapplied in their cases, thus arguing both sides of the same question.

Petitioners do not claim Section 11.18 was missapplied against them, in which case an appeal would be the obvious remedy. Petitioners' claim is that the law, both on its face and as applied, is uncon-

stitutional because it is arbitrary and is applied only against men, and therefore denies an effective appeal for the same reason it is unconstitutional in the first place. An appeal has no foundation where it complains a law was applied in a case the same as it is applied in other cases generally.

Thus, Petitioners are making a general attack on the statute which serves as the sole foundation of the judgments, and not the specific findings of the court in reaching the judgments, per se. It is not required that Petitioners file a class-action suit in order to seek relief from class-based discrimination under an unconstitutional state law. Steffel v. Thompson, 415 U.S. 452, 94 S.Ct. 1209.

The State Bar cites cases where unsuccessful state-court plaintiffs, who chose the state forum, were barred from relitigating the same issues in federal court. Such cases have no application to this

case because Petitioners were state-court defendants and did not choose the state forum. This Court ruled in England v. Louisiana Board of Medical Examiners, 375 U.S. 411, 84 S.Ct. 461, at U.S. 416, that:

> "The possibility of appellate review by this Court of a state court determination may not be substituted, against a party's wishes, for his right to litigate his federal claims fully in federal court."

The sum of all the defenses raised by Respondents in this case represent a direct attack on this Court's rule in England. Further, and for the same reasons, such defenses represent a direct attack on both the intent and effect of 42 U.S.C. Section 1983, since they claim deprivations of constitutional rights are sanctified under the cloak of state judicial authority.

The State Bar pretends that the statute on attorneys' fees is the only issue in this case, citing no authority to show the State Bar cannot be enjoined from teaching and promoting unconstitutional sexual discrimination in other areas of family law.

The State Bar's claim for attorney's fees in this case is unfounded for all the reasons stated in Petitioners' Reply to Respondent Sue Raybold's Opposition. In addition, the claim's sole premise is that this Court is incapable of recognizing a frivolous petition without the State Bar's assistance. If Petitioner's petition were frivolous, the State Bar would not have found it necessary to even respond to it. Thus, this claim should be rejected.

CONCLUSION

For the foregoing reasons, the State Bar of Texas' opposition to certiorari should be rejected by this Court.

Respectfully submitted,

Charles Reed

Roland Duty